

<By Email/ Without Prejudice>

To,

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Dated: 5th August 2020

Dear Sir/Ma'am,

Legal Notice regarding the use of Aadhaar for user registration for Integrated Local Self Governance Management System (ILGMS)

This communication is to draw your attention to legal, constitutional and practical constraints which are a bar to your department using or requiring Aadhaar verification to enroll in the Integrated Local Self Governance Management System (ILGMS).

1. The new online local self-governance management system (“**ILGMS**”) developed by the Information Kerala Mission aims to bring civil registration and other local self-governance services under a single online portal. However, it appears that Aadhaar number has been made mandatory for signing onto the portal, as seen in the screenshot of the website annexed herewith as **Annexure 1**.

2. It further appears that as per Order Nos. GO (Rt)No. 886/2020/LSGD dated 14.05.2020 and GO(Rt)No. 1003/2020/LSGD dated 28.05.2020, this has been rolled out this month.
3. We are constrained to bring to your attention that the use of Aadhaar for any purpose (other than those purposes strictly covered by Section 7 of the Aadhaar (Targeted Delivery of Subsidies, Services & Benefits) Act, 2016) is prohibited by the Supreme Court's judgment and order in *KS Puttaswamy v Union of India* (2019 10 SCC 1) ("**Puttaswamy judgement**"). If the government proposes to use Aadhaar for any purpose, the *Puttaswamy* judgment requires that three conditions are fulfilled before such use may be considered: one, there should be a legitimate state aim, two, a law must be enacted to permit such use, and three, it must conform to the doctrine of proportionality. For instance, the linking of Aadhaar with PAN was upheld as valid in law because of it being statutorily enabled vide Section 139AA in the Income Tax Act, 1961, and its validity was endorsed by the court. Any law made for expanding the use of Aadhaar must, therefore, be publicly discussed, and may be challenged in court.
4. The court, in *Puttaswamy*, allowed the use of Aadhaar under the 2016 Aadhaar Act only for the purposes of section 7, for which monies are drawn from the Consolidated Fund of India, or the Contingency Fund of India. While permitting this limited use, the court cautioned against the proliferation of the use of Aadhaar, holding that "their scope is not to be unduly expanded thereby widening the net of Aadhaar".
5. The judgment of Justice Chandrachud, which directly addressed the threat of surveillance arising from the architecture of the Aadhaar project, found the project posed an unconstitutional risk of surveillance. We are confident that the State of Kerala would not want to facilitate such surveillance of its citizens and ask that there be a total severance of links to the Aadhaar project.
6. It is pertinent to recall, on the question of the test of legitimate aim and proportionality, that the Hon'ble Court had struck down the use of Aadhaar for seeding in bank accounts despite an enacted legislative measure namely PMLA (Second Amendment) Rules, 2017 providing for it - for, such a measure was found not to pass the test of

proportionality. Under this test, the state must establish the existence of a rational nexus of the measure with the object of the legislation, and must establish that the necessity of the measure is worth risking the violation of rights that may occur as a result of use of Aadhaar. We are concerned that the object of the use of Aadhaar in IGLMS is not clear and defined, which obscures the aim of the state in inducting Aadhaar into the system.

7. An overarching concern is the serious risks to safety, security and health that a linkage to Aadhaar or Aadhaar-like measures in IGLMS would pose to the population, and to the sanctity of the project. We are setting out below an illustrative and inexhaustive list of the risks that have manifested over the years by the use, even where optional, of Aadhaar

- a. High Failure Rate for Biometric Authentication:** The biometric authentication of Aadhaar has had extremely high failure rates, forcing several state governments to issue clarifications regarding its use, and that it not be insisted upon to deny someone their entitlements. Exception-handling processes have been addressed in notifications issued by the UIDAI and Ministry of Consumer Affairs, Food & Public Distribution, directing State/UT Governments to ensure that none are denied their entitlements because they aren't enrolled in Aadhaar, or there are Aadhaar-related failures.¹ However, this has proven to be an insufficient bulwark, and several governmental departments have called off biometric authentication entirely, while other have created a "nominee system" to bypass biometric authentication by the individual,² allowing the use of another's biometrics to authenticate oneself. The insecurity to both the individual and the system cannot be stressed enough.

The COVID-19 pandemic has brought a heightened awareness to the health and safety risks posed by all types of biometric authentication, as the contact required increases the risk of spreading infections. Several central departments and state

¹ See Notifications dated 24.10.2017 and 08.11.2018 issued by the Ministry of Consumer Affairs, Food & Public Distribution, Government of India.

² See Circular No. 10243 issued by Food, Civil Supplies and Consumer Protection Department, *Govt. of Madhya Pradesh* dated 23.12.2019.

governments, including the State of Kerala, have issued instructions to suspend biometric authentication.³

- b. Lack of integrity of the Aadhaar database:** The integrity of the data in Aadhaar database has been called into question several times. The Aadhaar database was created on the basis of self-authenticated documents, and the UIDAI has admitted in the Supreme Court that no system of checking was adopted by it during enrollment, to validate the authenticity of the data submitted to it. In addition, the proliferation of illegal fingerprint casts contradicts any supposed security benefits of biometric authentication.⁴
- c. Serious security risks:** Since the Aadhaar's project's inception, there have been numerous data security breaches, leaks of personal data of Aadhaar holders, and reports that Aadhaar data is easily available for sale. This endangers every citizen enrolled in Aadhaar. A breach reported in February 2019 has been called the "largest data breach in the world," with between 1.3 million people to 100,000 persons' details leaked.⁵ These security risks are inherent to the system, as seen in the UIDAI's circular dated 25.07.2017, which advises all user agencies storing Aadhaar to use "Aadhaar Data Vaults". With this, the UIDAI has placed on record its concerns that with the Aadhaar number being a "lifetime identity for Indians," mere "unauthorised access" to the Aadhaar number poses a security risk. At the same time, as can be seen in the same circular, the UIDAI has declined to take any responsibility to ensure the enforcement, and monitoring, these "vaults". This has, therefore, remained on paper, and is, as of now, only an acknowledgment of the risks of the number being on various databases and with various agencies.

³ Kerala Suspends Biometric Authentication for ration shops in all districts, 12 March 2020, The News Minute, <https://www.thenewsminute.com/article/kerala-suspends-biometric-authentication-ration-shops-all-districts-120058>.

⁴ Ration Racket: 1,100 fingerprint casts found, 6 February 2020, Times of India, <https://timesofindia.indiatimes.com/city/ahmedabad/ration-racket-1100-fingerprint-casts-found/articleshow/73969626.cms>.

⁵ Indian State government leaks thousands of Aadhaar numbers, 1 February 2019, TechCrunch, <https://techcrunch.com/2019/01/31/aadhaar-data-leak/>.

d. Design flaws: The use of the Aadhaar payments system (“Aadhaar enabled banking system”) has been marked with high failure rates for a range of reasons including authentication failures, transactions going to incorrectly mapped accounts, incorrect debits from accounts, and a large number of dormant accounts created automatically.⁶

8. In light of this, we urge you to immediately discontinue the use of Aadhaar (mandatory or otherwise) for creating an account and accessing ILGMS, and to clarify the same in subsequent orders. As we have pointed out above, this not only is against the judgement of the Supreme Court in *Justice Puttaswamy(Retd.) v. Union of India &Anr. W.P. (Civil) 494 of 2012 & related matters reported at (2019) 1 SCC 1* but would also be extremely inexpedient and pose an unacceptable threat to the safety and integrity of your service and database. The creation of converged/ consolidated databases also pose a grave national security threat which we have no doubt the Government of Kerala would wish to avoid at all costs.

9. We urge you to take the following steps:

- a. Withdraw the order providing for the use of Aadhaar for registrants to the ILGMS system.
- b. Clarify, by way of circulars and by prominently issuing public notices in two newspapers having wide circulation, that the requirement for providing the Aadhaar number has been withdrawn and that the Aadhaar number is not required to use or access services provided under the ILGMS.

Thank you,



Bezwada Wilson



Kalyani Menon Sen

Endorsed by:

*Article 21 Trust, Rethink Aadhaar, Internet Freedom Foundation,
Swathanthra Malayalam Computing and SFLC.in*

⁶ *Glitches In Aadhaar Enabled Payment System Amplified As Transactions Surge*, 06 May 2020, BloombergQuint, <https://www.bloombergquint.com/business/glitches-in-aadhaar-enabled-payment-system-amplified-as-transactions-surge>.

Annexure 1

Screenshot of user registration portal accessible on <<https://ilgms.lsgkerala.gov.in/>>

The screenshot displays the user registration portal for the Integrated Local Governance Management System (ILGMS). The page header includes the Government of Kerala logo, a 'DEMO' watermark, and the ILGMS logo. The navigation menu contains links for HOME, E-APPLICATION, FILE SEARCH, QUICK CERTIFICATE, QUICK PAY, FEEDBACK, and OTHER UTILITIES. The main content area features a large banner for '15 YEARS OF CELEBRATING THE MAHATMA' and a registration form titled 'REGISTER'. The form has two tabs: 'Public' (selected) and 'Institution'. The fields are: Full Name, Aadhaar Number (highlighted with a red border and a red exclamation mark icon), Email Address, Mobile Number, and a CAPTCHA field with the code '111111'. A 'CREATE ACCOUNT' button is at the bottom of the form, with a link for 'Have an Account? Login'. Below the form, there are four icons representing different registration services: BIRTH REGISTRATION, COMMON MARRIAGE, HINDU MARRIAGE, and DEATH REGISTRATION.